

Senate Bill 399

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Reduces crime category classification of delivery of controlled substance within 1,000 feet of school when no actual or constructive transfer of controlled substance occurred.

A BILL FOR AN ACT

Relating to delivery of controlled substances; amending ORS 475.900.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 475.900 is amended to read:

475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

(a) The violation constitutes delivery or manufacture of a controlled substance and involves substantial quantities of a controlled substance. For purposes of this paragraph, the following amounts constitute substantial quantities of the following controlled substances:

(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

(C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(D) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(F) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine; or

(iii) 3,4-methylenedioxy-N-ethylamphetamine.

(b) The violation constitutes possession, delivery or manufacture of a controlled substance and the possession, delivery or manufacture is a commercial drug offense. A possession, delivery or manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at least three of the following factors:

(A) The delivery was of heroin, cocaine, methamphetamine, lysergic acid diethylamide, psilocybin or psilocin and was for consideration;

(B) The offender was in possession of \$300 or more in cash;

(C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous
 2 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly
 3 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a
 4 controlled substance offense;

5 (D) The offender was in possession of materials being used for the packaging of controlled sub-
 6 stances such as scales, wrapping or foil, other than the material being used to contain the substance
 7 that is the subject of the offense;

8 (E) The offender was in possession of drug transaction records or customer lists;

9 (F) The offender was in possession of stolen property;

10 (G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled
 11 substance offense;

12 (H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor
 13 chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

14 (I) The offender was using public lands for the manufacture of controlled substances;

15 (J) The offender had constructed fortifications or had taken security measures with the potential
 16 of injuring persons; or

17 (K) The offender was in possession of controlled substances in an amount greater than:

18 (i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

19 (ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

20 (iii) Eight grams or more of a mixture or substance containing a detectable amount of metham-
 21 phetamine;

22 (iv) Twenty or more user units of a mixture or substance containing a detectable amount of
 23 lysergic acid diethylamide;

24 (v) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin
 25 or psilocin; or

26 (vi) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance con-
 27 taining a detectable amount of:

28 (I) 3,4-methylenedioxyamphetamine;

29 (II) 3,4-methylenedioxymethamphetamine; or

30 (III) 3,4-methylenedioxy-N-ethylamphetamine.

31 (c) The violation constitutes *[a violation of]* **manufacture of a controlled substance within**
 32 **1,000 feet of a school under** ORS 475.848, [475.852, 475.862,] 475.868, [475.872,] 475.878, [475.882,
 33 475.888, 475.892] or 475.904.

34 **(d) The violation constitutes delivery of a controlled substance within 1,000 feet of a**
 35 **school under ORS 475.852, 475.862, 475.872, 475.882, 475.892 or 475.904 and there was an actual**
 36 **or constructive transfer from one person to another of a controlled substance.**

37 [(d)] (e) The violation constitutes manufacturing methamphetamine and the manufacturing con-
 38 sists of:

39 (A) A chemical reaction involving one or more precursor substances for the purpose of manu-
 40 facturing methamphetamine; or

41 (B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of
 42 manufacturing methamphetamine.

43 [(e)] (f) The violation constitutes a violation of ORS 475.860 (4)(a) or a violation of ORS 475.906
 44 (1) or (2) that is not described in ORS 475.907.

45 (2) A violation of ORS 475.752, [or] 475.806 to 475.894 **or 475.904** shall be classified as crime

1 category 6 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

2 (a) The violation constitutes delivery of heroin, cocaine, methamphetamine or
 3 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or
 4 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

5 (b) The violation constitutes possession of:

6 (A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

7 (B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

8 (C) Ten grams or more of a mixture or substance containing a detectable amount of metham-
 9 phetamine;

10 (D) Two hundred or more user units of a mixture or substance containing a detectable amount
 11 of lysergic acid diethylamide;

12 (E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin
 13 or psilocin; or

14 (F) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance con-
 15 taining a detectable amount of:

16 (i) 3,4-methylenedioxyamphetamine;

17 (ii) 3,4-methylenedioxymethamphetamine; or

18 (iii) 3,4-methylenedioxy-N-ethylamphetamine.

19 (c) **The violation constitutes delivery of a controlled substance within 1,000 feet of a**
 20 **school under ORS 475.852, 475.862, 475.872, 475.882, 475.892 or 475.904 and there was an at-**
 21 **tempted transfer from one person to another of a controlled substance.**

22 (3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1) or
 23 (2) of this section shall be classified as:

24 (a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-
 25 sion if the violation involves delivery or manufacture of a controlled substance; or

26 (b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-
 27 sion if the violation involves possession of a controlled substance.

28 (4) In order to prove a commercial drug offense, the state shall plead in the accusatory instru-
 29 ment sufficient factors of a commercial drug offense under subsections (1) and (2) of this section.
 30 The state has the burden of proving each factor beyond a reasonable doubt.

31 (5) As used in this section, "mixture or substance" means any mixture or substance, whether
 32 or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

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